

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CARLOS L. JENKINS,
Petitioner

Case No. 1:08-cv-142

vs

Dlott, J.
Bowman, M.J.

WARDEN, ROSS CORRECTIONAL
INSTITUTION,
Respondent

REPORT AND RECOMMENDATION

This habeas corpus action filed pursuant to 28 U.S.C. § 2254 on petitioner's behalf by counsel from the Ohio Public Defender's Office was administratively stayed for exhaustion purposes by Order and Judgment entered September 25, 2009. (*See* Docs. 15, 16). On May 5, 2011, respondent filed a notice informing the Court that petitioner had failed to comply with the terms and conditions of the stay order. (Doc. 17). Thereafter, on January 11, 2012, respondent filed a motion to dismiss for lack of prosecution. (Doc. 18). Petitioner's counsel responded to the motion to dismiss by filing a motion "for leave to withdraw due to ethical concerns," as well as a motion on petitioner's behalf for extension of time to March 7, 2012 in which to file a *pro se* response to the motion to dismiss. (Docs. 19-20). Both motions were granted by Order entered January 20, 2012. (Doc. 22). To date, petitioner has yet to file a response to the respondent's motion to dismiss although the March 7, 2012 filing deadline for doing so has long since passed.

Accordingly, in the absence of any response by petitioner either to respondent's notice filed on May 5, 2011 of petitioner's failure to comply with the terms and conditions of the stay order or to respondent's motion to dismiss by the extended deadline date of March 7, 2012, it is hereby **RECOMMENDED** that respondent's motion to dismiss for lack of prosecution (Doc.

18) be **GRANTED**, petitioner's petition for writ of habeas corpus (Doc. 1) be **DISMISSED** with prejudice, and the case closed.

IT IS SO RECOMMENDED.

/s/ Stephanie K. Bowman
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

cbc